IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1386 of 2005
with
CIVIL APPLICATION No. 4189 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
HON'BLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEB & 2 - Appellant(s)

Versus

MALTIBEN ARVINDBHAI & 3 - Respondent(s)

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Appearance :
MS RV ACHARYA for Appellant No(s).: 1,2.
None for Respondent No(s).: 1,1.
MR MEHUL S SHAH for Respondent No(s).: 1,1.
MR SURESH M SHAH for Respondent No(s).: 1,1.
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA and
HON'BLE MR.JUSTICE M.C.PATEL

Date : 23/06/2005

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Admit. Mr. Mehul Shah waives notice for the respondents – claimants. At the joint request of the

learned counsel for the parties, this appeal is taken up for final disposal and finally disposed of by this order.

2. Maltiben Arvindbhai, young widow, aged 25, of deceased Arvindbhai, Bhoja Gangdas Raghwani, aged 52 (who died during the pendency of the suit before the Trial Court) - father of deceased Arvindbhai and Jamnaben Bhojabhai Raghwani - mother of deceased Arvindbhai – plaintiffs had filed Special Civil Suit No.180 of 2001 in the Court of 2nd Joint Civil Judge (S.D.), Jamnagar claiming compensation of Rs.10,00,000/- on the death of deceased Arvindbhai who died at the young age of 30 on 11th April, 2001 due to electrocution, while ploughing his field.

3. It may be stated that the appellant – Board had admitted before the Trial Court that deceased Arvindbhai died due to electrocution. However, according to the Board, there was no negligence on their part and at the time of the unfortunate incident, there was lot of wind and because of that, the deceased got electric shock from the live wire as a result of which, he died. Thus, according to the Board, it was an act of God and there was no negligence on their part. Hence, the suit cannot be decreed in favour of the plaintiffs. The learned Judge did not accept the case of the Board that deceased Arvindbhai died due to an act of God. After appreciating the oral as well as documentary evidence on record, the learned Judge rightly held that there was complete negligence on the part of the Board in not changing the old and condemned wires

though on behalf of the village people, Sarpanch of the village had made an application in writing much prior to the incident. In spite of it, no steps have been taken by the Board. In that view of the matter and in view of the latest judgment of the Hon'ble Supreme Court in the case of **M.P. ELECTRICITY BOARD vs. SHAIL KUMARI AND OTHERS reported in (2002) 2 SCC Page 162**, the learned counsel for the appellants was hardly in a position to submit that the learned Judge committed an error in coming to the conclusion that because of the negligence on the part of the Board, the deceased died.

4. In this appeal, the main contention of the learned counsel for the appellants was that the learned Judge ought not to have partly decreed the suit of the plaintiffs and awarded additional sum of Rs.6,61,000/- that too, with penal interest at the rate of 12%, if the said amount was not deposited by the Board within two months from the date of publication of the judgment. It was submitted by the learned counsel for the Board that deceased Arvindbhai was 30 years old, therefore, the learned Judge was wrong in applying multiplier of 18. He submitted that at the most 15 years' multiplier should have been applied. He also submitted that on behalf of the plaintiffs, no authentic evidence was led regarding monthly income of Rs.3,000/- of deceased Arvindbhai. However, one cannot ignore the fact that he was having passport and working as a mason as well as doing agricultural work. The very fact that while ploughing his filed, he died because he came into contact with a live wire which fell on him, is not in dispute. In

that view of the matter, nowadays, one can easily infer the income of the deceased at the rate of Rs.3,000/- per month. Thus, it cannot be said that the learned Judge was wrong in fixing his monthly income at the rate of Rs.3,000/-. However, there is lot of substance in the submission made by the learned counsel for the appellant – Board that in the instant case, the deceased had no issue. His parents were old and there was likelihood of remarriage of his widow as per the custom in their community, therefore, at the most 15 years' multiplier should have been applied. Having regard to the peculiar facts and circumstances of the case, Mr. Shah was hardly in a position to oppose this submission. On peculiar facts and circumstances of the case, we are of the considered opinion that 15 years' multiplier should have been applied by the learned Judge while awarding compensation at the rate of Rs.3,000/- per month. Thus, considering his yearly income at the rate of Rs.36,000/- and applying multiplier of 15, it would come to Rs.5,40,000/-. In addition to this, the respondents were entitled for consortium at the rate of Rs.20,000/- which was rightly awarded by the learned Judge. For cremation, the learned Judge has rightly awarded Rs.10,000/-. For transportation charges, Rs.3,000/- was awarded. The said amount cannot be said to be exorbitant. Therefore, we are not inclined to interfere with the said amount. Thus, the respondents – plaintiffs were entitled to Rs.5,40,000/- by way of compensation for the loss of future income of the deceased, Rs.20,000/- by way of consortium, Rs.10,000/- for the cremation and Rs.3,000/- for transportation charges. Thus, it would come to Rs.5,73,000/-, in all, with interest at the rate of 9% on it.

5. The appellant – Board had already deposited the decretal amount with cost and interest at the rate of 9% per annum before the Trial Court, as stated at the bar by learned counsel for the appellant – Board. During the pendency of the suit, plaintiff no.2 - Bhojabhai, father of deceased Arvindbhai had also died. Therefore, only two widows i.e. Maltiben - widow of deceased Arvindbhai and Jamnaben - widow of Bhojabhai and mother of Arvindbhai survive. Therefore, the total amount of Rs.5,73,000/- plus cost and interest deposited by the appellant – Board at the rate of 9% per annum will have to be paid to the respondents – Maltiben Arvindbhai and Jamnaben Bhojabhai in equal proportion by the Trial Court. Remaining amount shall be refunded to the appellant – Board.

6. Accordingly, this appeal is partly allowed and the impugned judgment and decree passed by the learned 2nd Joint Civil Judge (S.D.), Jamnagar on 23rd October, 2004 awarding compensation at the rate of Rs.6,61,000/- with interest at the rate of 9% is hereby modified and it is ordered that the respondents will be entitled for compensation of Rs.5,73,000/- with interest at the rate of 9% and cost which shall be paid to them by the Trial Court in equal proportion. However, there shall be no order as to costs of this appeal.

7. Civil Application No.4189 of 2005 does not survive any more as the main appeal itself is partly allowed.

Notice issued on it stands discharged. Ad-interim relief granted earlier stands vacated forthwith.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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